IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 28 OF 2005

Kakade and Compnay
Through its partners ...Petitioners

Versus

The Commissioner,
Pimpri Chinchwad Corpn. & Ors. ...Respondents

.....

Mr. R.S. Atpe with Mr. M.S.Lagu, counsel for Petitioners.

Mr. N.V. Walawalkar, counsel for Respondent No.1.

Mr. A.H. Palekar, A.G.P.for Respondent No.2.

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CORAM: B. H. MARLAPALLE, J.

DATED: 10TH MARCH, 2005

P. C.:-

1. Heard Mr. Apte, the learned counsel for the petitioners who are the plaintiffs in Regular Civil Suit No. 1015 of 2003 presently pending before the learned C.J.S.D. Pune. In the said suit, an application for temporary injunction was filed at Exh.5 and it was rejected by the trial Court by the order dated 8.12.2004. The said order was carried in Misc. Civil Appeal No.398 of 2004 which also came to be dismissed by the learned Xth Ad-hoc Additional District Judge at Pune vide his judgment and order dated 23.12.2004. Hence, this petition.

2. Both the courts below concurrently held that there was no prima facie case made out by the petitioners in support of the prayer for temporary injunction against the respondent authorities. However, this Court by order dated 14.1.2005 had noted that the suit property is numbered as CTS No. 4607/1 to 32, 4608/1, 4597 and 4606/4, and perhaps to have a double check, this Court ordered the District Inspector of Land Records/Taluka Inspector of Land Records to conduct a site inspection in respect of the properties under City Survey No. 4597 to 4606 in the presence of Senior Town Planner of the Corporation and representatives of the petitioners and thereafter to submit a report. The Town Planner Pimpri Chinchwad, has submitted his report dated 14.2.2005 after conducting the site inspection and it has been stated that the following City Survey Nos. are affected in the widening of the road to 61 meters;-

> " 4599, 4599/1 (part), 4602 (part), 4602/1 (part), 4602/3 (part), 4602/4 (part), 4603 (part), 4603/1 (part), 4602/2 (part) and 4603/8.

3. As against the affected survey numbers, the suit

property in which Jagganath Complex is claimed to be standing, as per the averments in the petition memo as well as the plaint, is covered by the City Survey No. 4607 to 4607/32, 4597 to 4606/4 and 4608/1. If regards be had to the site inspection report dated 14.2.2005, it is clear that the suit properties do not seem to be affected properties by the proposed widening of the road to 61 meters and thus, even the step taken by this Court in terms of equity so as to ensure that no prejudice was likely to be caused to the petitioners, does not assist the cause of the petitioners.

4. No interference, therefore, is called for in the concurrent findings recorded by both the courts below regarding the prima facie case as well as the balance of convenience being against the petitioners. Hence, this petition fails and the same is hereby rejected. Ad interim order stands vacated.

5. It is clarified that this order will not come in the way of the petitioners for seeking further amendment that may be permissible in law.